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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke
Probation Against:

LESLIE K. BENSON
26 Haverhill Road
Laguna Niguel, CA 92677

Physical Therapy Certificate No. PT 15197

Respondent.

Case No. 1D_1998_62206

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.
2. On or about August 19, 1998, the Physical Therapy Board of California issued Physical Therapy Certificate No. PT 15197 to Leslie K. Benson (Respondent). The certificate was in effect at all times relevant to the charges brought herein, and will expire on May 31, 2002, unless renewed.

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3. In a disciplinary action entitled "In the Matter of Accusation Against Leslie K. Benson," Case No. 1D 1998_62206, the Physical Therapy Board of California, issued a decision, effective October 5, 2000, in which Respondent's Physical Therapy Certificate was revoked. However, the revocation was stayed and Respondent's certificate was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Physical Therapy Board of California (Board), under the authority of the following sections of the Business and Professions Code (Code).

Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

Section 2660 of the Code states:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

(f) Habitual intemperance.

(g) Addiction to the excessive use of any habit-forming drug.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

1. Section 2239 of the Code states:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

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2.

Section 4022 of the Code states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

(a) Any drug that bears the legend: “Caution, federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.

(c) Any other drug or device that federal or state law can be lawfully dispensed only on prescribed or furnished pursuant to Section 4006.

California Code of Regulations, title 16, section 1399.20, states:

For the purposes of denial, suspension or revocation of a license or approval, pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license or approval under the Physical Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a person to perform the functions authorized by the license or approval in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act.

(c) Violating or attempting to violate any provision or term of the Medical Practice Act.

3. zepam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(18) .

COST RECOVERY

4. Section 2661.5 of the Code states:

In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case.

FIRST CAUSE FOR DISCIPLINE

(Use/Administering of Alcohol and Controlled Substance)

5. Respondent is subject to disciplinary action under Code sections 2239(a), 2660(i), and CCR, Title 16, sections 1399.20 (a) and (c), in that she used a controlled substance and alcohol to an extent that the use was dangerous or injurious to herself and others. The circumstances are as follows:

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a. On or about March 4, 2001, respondent tested positive for Benzodiazepam. Respondent did not have a prescription for Benzodiazepam, a controlled substance.

b. On or about November 19, 2001, during a scheduled meeting with respondent's

probation monitor, respondent submitted to a urine analysis. The results were positive for Benzodiazepine (detected as Oxazepam). Prior to submitting to the urine analysis, respondent's probation monitor asked respondent whether respondent was taking any type of medication. Respondent replied that she was not.

c. On or about April 4, 2001, respondent was observed intoxicated from drinking alcohol, to an extent the use was dangerous or injurious to herself and others when respondent struck her boyfriend.

d. On or about June 24, 2001, respondent was observed by her roommate and a Riverside Sheriff Deputy to be intoxicated. The Riverside Sheriff's Department was summoned by respondent's roommate due to respondent exposing her breasts at the complex pool while intoxicated.

SECOND CAUSE FOR DISCIPLINE

(Habitual Intemperance and Addiction)

6. Respondent is subject to disciplinary action under Code sections 2260(i), 2260(f), 2260(g) and CCR, Title 16, sections 1399.20 (a) and (c), in that respondent has demonstrated habitual intemperance and addiction to the excessive use of alcohol by her continuance to drink alcohol and discharge from diversion for failing to stay clean and sober, as more particularly described in paragraph 12 above, and paragraphs 14 through 17 and 25, below, which are incorporated herein in their entirety.

FIRST CAUSE TO REVOKE PROBATION

(Diversion Program)

7. At all times after the effective date of Respondent's probation, Condition 1 stated:

Within 15 days from the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that participation in the diversion program is no longer necessary. Failure to comply with requirements of the Diversion Program, terminating the program without permission or being expelled for cause shall constitute a violation of probation by respondent.

8. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 1, referenced above. The facts and circumstances regarding this violation are as follows:

a. On or about March 4, 2001, respondent tested positive for Benzodiazepam, a controlled substance thereby failing to comply with Diversion. Respondent does not have a prescription for Benzodiazepam.

b. On or about April 4, 2001 and June 24, 2001, respondent was observed intoxicated from drinking alcohol thereby failing to comply with Diversion terms to stay clean and sober.

c. On or about June 8, 2001, respondent was discharged from Diversion for failing to provide basic information necessary to monitor her compliance with the Board's mandates; consistently failing to provide accurate information about her whereabouts; failing to remain in treatment until clinically discharged; and she was unable to be reached for long periods of time.

SECOND CAUSE TO REVOKE PROBATION

(Obey All Laws)

9. At all times after the effective date of Respondent's probation, Condition 2 stated:

Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California.

10. Respondent's probation is subject to revocation because she failed to comply with Probation Condition

2, referenced above. The facts and circumstances regarding this violation are as follows:

a. On or about March 2001, respondent tested positive for Benzodiazepam, a controlled substance. Respondent does not have a prescription for Benzodiazepam, in violation of Business and Professions Code section 2239(a).

b. On or about October 19, 2001, respondent submitted a urine analysis to his probation monitor. Prior to submitting the urine analysis, respondent's probation monitor asked if she was taking any medication and she stated that she was not. The results tested positive for Benzodiazepine (detected as Oxazepam), in violation of Business and Professions Code section 2239(a).

THIRD CAUSE TO REVOKE PROBATION

(Probation Monitoring Program Compliance) 

11. At all times after the effective date of Respondent's probation, Condition 6 stated:
Respondent shall comply with the Board's probation monitoring program.

12. Respondent's probation is subject to revocation because she failed to comply with Probation Condition

6, referenced above. The facts and circumstances regarding this violation are as follows:

a. The Board's probation monitoring program required respondent to notify the Board in writing of any change of employment.

b. On or about May 8, 2001, respondent began employment with Monterey Palms Health Care. Respondent failed to notify the Board in writing of her employment with Monterey Palms Health Care.

c. On or about June 12, 2001, respondent was terminated from her employment with Monterey Palms Health Care for failing to report to work for one week. Respondent failed to notify the Board in writing she was terminated from her employment.

FOURTH CAUSE TO REVOKE PROBATION

(Interview with the Board or its Designee)

13. At all times after the effective date of Respondent's probation, Condition 7 stated:

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice.

14. Respondent's probation is subject to revocation because she failed to comply with Probation Condition

7, referenced above. The facts and circumstances regarding this violation are as follows:

On or about June 4, 2001, respondent failed to appear for a scheduled interview with her probation monitor.

FIFTH CAUSE TO REVOKE PROBATION

15. At all times after the effective date of Respondent's probation, Condition 9 stated:

The respondent shall notify the Board, in writing, of any and all changes of name or address within ten days.

16. Respondent's probation is subject to revocation because she failed to comply with Probation Condition

9, referenced above. The facts and circumstances regarding this violation are as follows:

a. On or about October 19, 2001, respondent met with her probation monitor. During this meeting, respondent told her probation monitor she moved in September to a new address of 426 Monterey, #A, San Clemente, CA 92672. Respondent failed to notify the Board in writing of this change of address.

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SIXTH CAUSE TO REVOKE PROBATION

(Violation of Probation)

17. At all times after the effective date of Respondent's probation, Condition 15 stated:

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

18. Respondent's probation is subject to revocation because she failed to comply with Probation Condition

15, referenced above. The facts and circumstances regarding this violation are as follows:

a. Respondent violated probation when she was terminated from Diversion on June 8, 2001; relapsed and drank alcohol on numerous occasions; failed to notify the Board of her change of address; failed to notify the Board of her change of employment; and failed to meet with her probation monitor for a scheduled interview.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking the probation that was granted by the Physical Therapy Board of California in Case No. 1D 1998_62206 and imposing the disciplinary order that was stayed thereby revoking Physical Therapy Certificate No. PT 15197 issued to Leslie K. Benson;
2. Revoking or suspending Physical Therapy Certificate No. PT 15197, issued to Leslie K. Benson;
3. Ordering Leslie K. Benson to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5; and

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4. Taking such other and further action as deemed necessary and proper.

DATED: 1/16/2002.

Original Signed By
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

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